IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 8323 OF 1992

Date of Decision : 25th September, 2007

Sanjay Tiwari.

... Petitioner

Versus

Haryana State Electricity Board and another.

... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. J.S. Maanipur, Advocate,
for the petitioner.

Mr. Aman Chaudhary, Advocate,
for the respondents.

S.D. Anand, J.

Concededly, (after the termination of the petitioner-which is presently not under challenge), his fresh appointment to the relevant post was decided vide appointment memorandum dated 05.06.1991 (Annexure P/5). Vide resolution dated 27.06.1991(Annexure P/6), it was announced to the fresh appointees (including the petitioner) that "they should not be allowed any further chance if they fail to qualify the prescribed test/Exam within the stipulated period." In pursuance of Annexures P/5 and P/6, appointment order dated 10.07.1991 (Annexure P/7) was issued. In pursuance thereof, he joined on 12.07.1991.

In that view of things, on the own showing of the respondents, the petitioner had time up to 12.07.1993 at his disposal to clear the

departmental examination. However, his services were terminated in the year 1992 vide Annexure P/8 dated 19.05.1992 and Annexure P/9 dated 21.05.1992.

The rules then prevalent (circulated vide letter dated 09.03.1990) provided that the persons holding the post of the category of the petitioner could clear departmental examination within two years from the date of the appointment. ("An incumbent so recruited, shall be appointed as Divisional/Revenue-Account (Trainee) for a period of one year on regular pay scale of the post. After completion of successful training he shall have to qualify the Departmental Examination of Divisional/Revenue Acctt. within a period of two years or in 3 successive chances whichever is earlier from the date of their appointment as Divisional/Revenue Accountant, failing which his services, shall be terminated/dispensed with after the expiry of the prescribed period or chances, without notice and without assigning any reason".)

During the pendency of the present writ petition, the petitioner last appeared for the departmental examination held during the period 01.09.2003 to 02.09.2003, under the orders dated 29.08.2003 of this Court. The result was ordered to be retained in a sealed cover. This Court had earlier granted stay on the operation of the orders dated 19.05.1992 (Annexure P/8) and 21.05.1992 (Annexure P/9).

At the hearing of the case today, the sealed cover was obtained from the learned counsel for the respondents. It was opened. It transpired that the petitioner had cleared the departmental examination held on 01.09.2003 to 02.09.2003. The expression used in the course of the result sheet is "Result of Departmental Accounts Examination for Section Officer

Part-I in respect of Sh. Sanjay Tiwari, Apprentice Accountant conducted by UHBVNL from 1.9.2003 to 2.9.2003 in compliance to the directions imparted by Hon'ble Punjab and Haryana High Court Chandigarh dated 29.8.03. Result : Passed in Complete Exam. of S.O.-I."

The irresistible inference which can be drawn in the circumstances of the case is that the services of the petitioner could not have been validly terminated, for want of clearance of the departmental examination, before 12.07.1993. The plea that the petitioner had himself acquiesced in the condition imposed that he would clear the departmental examination within one year is not worthy of acceptance, for the reason that it is in violation of the rules circulated vide letter dated 09.03.1990. As the petitioner is proved to have cleared the departmental examination before that two years period (counted w.e.f. his fresh appointment), he deserves to succeed in the present writ petition. Even otherwise, he deserves to succeed on yet another count. Annexure P/8 announced termination of services of the petitioner for want of clearance of the departmental examination; while Annexure P/9 announced the termination of his services on account of willful absence. Both these counts are apparently irreconcilable. It is not even the plea that the plea of absence had been enquired into.

In the light of foregoing discussion, the present writ petition shall stand allowed. Orders dated 19.05.1992 (Annexure P/8) and 21.05.1992 (Annexure P/9) are invalidated. (The result sheet obtained from the learned counsel for the respondents today has been returned to him.)

September 25, 2007 (S.D. Anand)
vkd Judge

Note: Whether referred to report : Yes/No